

COMPTROLLER GENERAL OF THE UNITED STATES

Washington 25

January 17, 1947

B-62616

Administrator of Veterans' Affairs,

Veterans' Administration.

My dear General Bradley:

There has been considered your letter of December 19, 1946,
as follows:

"At the present time there are a number of former officers of the armed forces now retired for disability not incurred in combat with the enemy or as a result of an explosion of an instrumentality of war, or other cause, who are exceptionally well qualified to render valuable assistance as Consultants in the Department of Medicine and Surgery of the Veterans Administration if such employment does not conflict with existing laws and regulations. Accordingly, your decision is requested on the following question involving such employment and the payment of compensation thereunder:

"(a) May the Veterans Administration pay compensation to such retired officers employed as Consultants when the payment of that compensation exceeds the \$3000 statutory limitation imposed by Section 212 of the Act of June 30, 1932, as amended, provided this compensation is based on a specific amount per visit as differentiated from a per annum, per diem, or other time element basis?

"This office is aware of the Act of July 31, 1894, as amended (5 U.S.C. 62), Section 212 of the Act of June 30, 1932, as amended, and Public Law 718, 79th Congress, approved August 10, 1946, and decisions of your office: B-60202 dated October 4, 1946; 12 Comp. Gen. 256; 13 id. 448; 14 id. 68; 16 id. 47; 19 id. 391.

"In view of the urgent need of the Veterans Administration to secure the services of such qualified personnel, I respectfully request an early decision in this matter."

While it is not so stated in the submission, it is assumed--
and the conclusions reached herein are predicated upon the premise--

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that the Veterans' Administration intends to employ the consultants involved under the authority conferred upon the Administrator of Veterans' Affairs by section 14(a) of the Public Law 293, approved January 3, 1946, 59 Stat. 675, and that the consultants, when employed, will come within the meaning of that term, as defined in decision of May 2, 1946, B-57176, to you.

Section 212 of the Economy Act of June 30, 1932, 47 Stat. 406, as amended by section 3 of the act of July 15, 1940, 54 Stat. 761 (5 U.S.C. 59a), provides as follows:

"(a) After the date of the enactment of this Act, no person holding a civilian office or position, appointive or elective, under the United States Government or the municipal government of the District of Columbia or under any corporation, the majority of the stock of which is owned by the United States, shall be entitled, during the period of such incumbency, to retired pay from the United States for or on account of services as a commissioned officer in any of the services mentioned in the Pay Adjustment Act of 1922 [U.S.C., title 37], at a rate in excess of an amount which when combined with the annual rate of compensation from such civilian office or position, makes the total rate from both sources more than \$3,000; and when the retired pay amounts to or exceeds the rate of \$3,000 per annum such person shall be entitled to the pay of the civilian office or position or the retired pay, whichever he may elect. As used in this section, the term 'retired pay' shall be construed to include credits for all service that lawfully may enter into the computation thereof.

"(b) This section shall not apply to any person whose retired pay, plus civilian pay, amounts to less than \$3,000: Provided, That this section shall not apply to regular or emergency commissioned officers retired for disability incurred in combat with an enemy of the United States or for disabilities resulting from an explosion of an instrumentality of war in line of duty during an enlistment or employment as provided in Veterans Regulation Numbered 1 (a), part I, paragraph I."

The term "compensation" in its generally accepted meaning embraces both "fees" and "salary," as well as remuneration received

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in any other form for services rendered. 12 Comp. Gen. 219; 13 id. 101; 18 id. 768; Reynolds v. Reynolds, 58 P. 2d 660, 661; Blick v. Mercantile Trust & Deposit Co., 77 A. 844. For other cases to the same effect, see Words and Phrases, Permanent Edition, volume 8, pages 192-207. In decision of September 20, 1932, A-44560, 12 Comp. Gen. 369, it was held that fees of United States commissioners are "compensation" within the meaning of section 212 of the Economy Act. The conclusion reached therein in that respect is equally applicable to the case of consultants employed upon a fee basis.

In decision of September 25, 1939, B-5841, 19 Comp. Gen. 391, cited in your letter, it was stated:

"In the cases that have come before this office for decision involving the application of section 212 of the 1932 statute to a retired military or naval officer occupying a civilian office or position under the United States Government, no distinction has been made between temporary and permanent positions--no such distinction being made in the statute. In the case of Gen. Pelham Glassford, United States Army, retire, who was designated by the Department of Labor as conciliator in a labor dispute, a temporary employment, with compensation at the rate of \$20 per diem, plus expenses, the decision of June 16, 1934, A-55759, 13 Comp. Gen. 448, held that while he did not hold an 'office' within the meaning of the act of 1894, supra, he did hold a civilian position and was required by the terms of section 212 of the act of June 30, 1932, to elect between his retired pay and compensation of the civilian position. The decision was sustained upon review under date of June 29, 1934, A-55759. That decision was applied in the similar case of Admiral Henry A. Wiley, United States Navy, retired, who was temporarily appointed by the President to serve as a member of the National Steel Labor Relations Board. See decision of July 25, 1934, 14 Comp. Gen. 68; also, decision of July 18, 1936, 16 Comp. Gen. 47, involving the case of Rear Admiral George H. Rock, United States Navy, retired, who was appointed under authority of the act of April 13, 1936, 49 Stat. 1204, as a member of a committee to make an independent study and investigation of the rules for the measurement of vessels using the Panama Canal, etc. Reference may

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be made, also, to decision of August 17, 1932, 12 Comp. Gen. 256, applying section 212 of the act of June 30, 1932, to part-time positions of the Veterans' Administration * * *."

So far as I am aware this office has not had occasion to pass upon the question of whether an officer of the armed forces retired for disability, who is employed as a consultant upon a fee basis, holds a "civilian office or position," within the meaning of those words as used in section 212 of the Economy Act, but it has been held in respect of the act of July 31, 1894, 28 Stat. 205, as amended (5 U.S.C. 62), that the engaging of the services of a physician as consultant, by contract or otherwise, upon a fee basis, for services actually performed, is not an appointment to an "office to which compensation is attached" within the meaning of those words as used in the said 1894 statute. See 22 Comp. Gen. 312, and decisions cited therein; also, 23 Comp. Gen. 275, 277. It would not appear that the consultants the Veterans' Administration is desirous of employing in the instant matter will perform or supervise duties and responsibilities imposed by law upon the agency, or be under the administrative control of an official of the Government in the usual sense. On the contrary, it is understood that their employment will be in an advisory capacity. That is to say, their duties will consist primarily of expressing their views and giving their opinions and recommendations upon particular problems and questions presented to them for consideration, in consultation or otherwise, by administrative officers of the Government. Hence, while appointments

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under Public Law 718, approved August 10, 1946, are to "any civilian office or position," it reasonably may be concluded that the employment by the Veterans' Administration of former officers of the armed forces retired for disability as consultants upon a fee basis pursuant to section 14(a) of Public Law 293, supra, will not be in contravention of section 212 of the Economy Act--no sound reason being perceived for regarding them as occupying an "office or position" within the meaning of those terms as used in said statute notwithstanding that the term "Compensation" as used therein is sufficiently broad to include fees. Compare decision B-5531, dated August 25, 1939, 19 Comp. Gen. 284, to your predecessor.

Accordingly, the question presented is answered in the affirmative.

Respectfully,

(Signed) LINDSAY C. WARREN

Comptroller General
of the United States.